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6 Attorneys for Third-Party Defendant
OPTIMUM DATA, INC.

15 CISCO SYSTEMS, INC., a Delaware
16 corporation and CISCO TECHNOLOGY,
INC., a California corporation.

17 || Plaintiffs,

18 | v.

19 DEXON COMPUTER, INC., a Minnesota corporation.

Defendant.

Case No. 3:20-cv-4926 CBB

Hon. Charles R. Breyer

**THIRD-PARTY DEFENDANT OPTIMUM
DATA, INC.'S ANSWER TO THIRD-
PARTY CLAIMS (DKT. NO. 107)**

DEMAND FOR JURY TRIAL

22 DEXON COMPUTER, INC., a Minnesota
corporation.

24 Counterclaim Plaintiff and
Defendant,

V.

25 CISCO SYSTEMS, INC., a Delaware
26 corporation and CISCO TECHNOLOGY,
INC., a California corporation,

27 Counterclaim Defendants and Plaintiffs

1 DEXON COMPUTER, INC., a Minnesota
2 corporation,

3 Third-Party Plaintiff,

4 v.
5 ATLANTIX GLOBAL SYSTEMS
6 INTERNATIONAL, LLC, BIZCOM
7 ELECTRONICS, INC., DIGI DEVICES
8 ONLINE, ENTERPRISE BUSINESS
9 TECHNOLOGIES, INC., FIBER CABLE
10 CONNECTIONS, MJSI, MULTIMODE
11 TECHNOLOGIES, LLC, NETWORK
12 REPUBLIC, OPTIMUM DATA, INC.,
13 PARAGON, PURE FUTURE TECHNOLOGY,
14 INC., SEASTAR IT TRADING LLC, SERVER
15 TECH SUPPLY, SOFTNETWORKS, INC.,
16 STRADA NETWORKS, LLC, STRATEGIC
17 TELECOM SUPPLY & SOLUTIONS,
18 TEKSAVERS, UNLIMITED NETWORK
19 SOLUTIONS, WISECOM TECHNOLOGIES,

20 Third-Party Defendants.

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1 COMES NOW Third-Party Defendant Optimum Data, Inc. (“Optimum”), by its
 2 undersigned counsel, and submits its Answer and Affirmative Defenses to Third-Party Plaintiff’s
 3 Third-Party Claims (“TP Complaint;” Dkt. No. 107) filed by Dexon Computer, Inc. (“Dexon”) as
 4 follows:

5 **THIRD PARTY CLAIMS**

6 233. The first paragraph of the TP Complaint prefaces Dexon’s allegations and lists the
 7 Third Party Defendants and requires no response. To the extent a response is required, Optimum
 8 denies each and every allegation of misconduct alleged by Dexon and denies that Dexon is
 9 entitled to relief from Optimum.

10 **THE PARTIES**

11 234. Optimum is without knowledge or information sufficient to form a belief as to the
 12 truth of the allegations contained within Paragraph 234 of the TP Complaint and therefore denies
 13 those allegations.

14 235. Optimum is without knowledge or information sufficient to form a belief as to the
 15 truth of the allegations contained within Paragraph 235 of the TP Complaint and therefore denies
 16 those allegations.

17 236. Optimum is without knowledge or information sufficient to form a belief as to the
 18 truth of the allegations contained within Paragraph 236 of the TP Complaint and therefore denies
 19 those allegations.

20 237. Optimum is without knowledge or information sufficient to form a belief as to the
 21 truth of the allegations contained within Paragraph 237 of the TP Complaint and therefore denies
 22 those allegations.

23 238. Optimum is without knowledge or information sufficient to form a belief as to the
 24 truth of the allegations contained within Paragraph 238 of the TP Complaint and therefore denies
 25 those allegations.

26 239. Optimum is without knowledge or information sufficient to form a belief as to the
 27 truth of the allegations contained within Paragraph 239 of the TP Complaint and therefore denies
 28 those allegations.

1 240. Optimum is without knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained within Paragraph 240 of the TP Complaint and therefore denies
3 those allegations.

4 241. Optimum is without knowledge or information sufficient to form a belief as to the
5 truth of the allegations contained within Paragraph 241 of the TP Complaint and therefore denies
6 those allegations.

7 242. Optimum admits that Optimum is a Nebraska corporation with its principal place
8 of business in Nebraska.

9 243. Optimum is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations contained within Paragraph 243 of the TP Complaint and therefore denies
11 those allegations.

12 244. Optimum is without knowledge or information sufficient to form a belief as to the
13 truth of the allegations contained within Paragraph 244 of the TP Complaint and therefore denies
14 those allegations.

15 245. Optimum is without knowledge or information sufficient to form a belief as to the
16 truth of the allegations contained within Paragraph 245 of the TP Complaint and therefore denies
17 those allegations.

18 246. Optimum is without knowledge or information sufficient to form a belief as to the
19 truth of the allegations contained within Paragraph 246 of the TP Complaint and therefore denies
20 those allegations.

21 247. Optimum is without knowledge or information sufficient to form a belief as to the
22 truth of the allegations contained within Paragraph 247 of the TP Complaint and therefore denies
23 those allegations.

24 248. Optimum is without knowledge or information sufficient to form a belief as to the
25 truth of the allegations contained within Paragraph 248 of the TP Complaint and therefore denies
26 those allegations.

27 249. Optimum is without knowledge or information sufficient to form a belief as to the
28 truth of the allegations contained within Paragraph 249 of the TP Complaint and therefore denies

1 those allegations.

2 250. Optimum is without knowledge or information sufficient to form a belief as to the
3 truth of the allegations contained within Paragraph 250 of the TP Complaint and therefore denies
4 those allegations.

5 251. Optimum is without knowledge or information sufficient to form a belief as to the
6 truth of the allegations contained within Paragraph 251 of the TP Complaint and therefore denies
7 those allegations.

8 **Supply of Alleged Counterfeit and Infringing Product**

9 252. Responding to Paragraph 252 of the TP Complaint, Optimum admits that it is a
10 reputable dealer with respect to the products it sells, including but not limited to, Cisco products.
11 Optimum denies any allegations inconsistent therewith and is without knowledge or information
12 sufficient to form a belief as to the truth of the remaining allegations contained within Paragraph
13 252 of the TP Complaint and therefore denies those allegations.

14 253. Responding to Paragraph 253 of the TP Complaint, Optimum admits that it has
15 conducted business with Dexon. Optimum is without knowledge or information sufficient to form
16 a belief as to the truth of the remaining allegations contained within Paragraph 253 of the TP
17 Complaint and therefore denies those allegations.

18 254. Optimum states that Paragraph 254 of the TP Complaint contains legal conclusions
19 to which no response is required. To the extent a response may be required, Optimum denies the
20 allegations of Paragraph 254 of the TP Complaint.

21 **FIRST THIRD PARTY CLAIM**

22 **(Indemnification – All Third Party Defendants)**

23 255. Responding to Paragraph 255 of the TP Complaint, Optimum reasserts and hereby
24 incorporates by reference each of its responses set forth in the preceding paragraphs as if fully set
25 forth herein.

26 256. Optimum is without knowledge or information sufficient to form a belief as to the
27 truth of the allegations contained within Paragraph 256 of the TP Complaint and therefore denies
28 those allegations.

1 257. Optimum states that Paragraph 257 of the TP Complaint contains legal conclusions
2 to which no response is required. To the extent a response may be required, Optimum denies the
3 allegations of Paragraph 257 of the TP Complaint.

SECOND THIRD PARTY CLAIM

(Contribution – All Third Party Defendants)

6 258. Responding to Paragraph 258 of the TP Complaint, Optimum reasserts and hereby
7 incorporates by reference each of its responses set forth in the preceding paragraphs as if fully set
8 forth herein.

9 259. Optimum is without knowledge or information sufficient to form a belief as to the
10 truth of the allegations contained within Paragraph 259 of the TP Complaint and therefore denies
11 those allegations.

12 260. Optimum states that Paragraph 260 of the TP Complaint contains legal conclusions
13 to which no response is required. To the extent a response may be required, Optimum denies the
14 allegations of Paragraph 260 of the TP Complaint.

PAYER FOR RELIEF

16 In response to Dexon's Prayer for Relief, Optimum denies that Dexon is entitled to any
17 relief of any kind from Optimum.

OPTIMUMS'S AFFIRMATIVE DEFENSES

19 Pursuant to Federal Rule of Civil Procedure 8(b) and (c), without assuming any burden
20 that it would not otherwise bear, without reducing or removing Dexon's burdens of proof on its
21 affirmative claims against Optimum, reserving its right to assert additional defenses, and
22 affirmatively and solely to the extent deemed necessary by the Court to maintain any or all of the
23 following defenses, Optimum asserts the following defenses to the TP Complaint:

FIRST AFFIRMATIVE DEFENSE

25 Dexon's TP Complaint and each cause of action contained therein fail, in whole or in part,
26 to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

28 ||| Dexon is barred from pursuing its claims against Optimum in this Court because venue is

improper.

THIRD AFFIRMATIVE DEFENSE

Dexon's TP Complaint fails because Dexon has not suffered damages.

FOURTH AFFIRMATIVE DEFENSE

Dexon's claims are barred, in whole or in part, because Dexon failed to mitigate its damages, if any.

FIFTH AFFIRMATIVE DEFENSE

Dexon's claims are barred, in whole or in part, by the doctrine of unclean hands.

SIXTH AFFIRMATIVE DEFENSE

Dexon lacks standing to assert any claims in the TP Complaint.

SEVENTH AFFIRMATIVE DEFENSE

Dexon's claims are barred, in whole or in part, by the doctrine of estoppel.

EIGHTH AFFIRMATIVE DEFENSE

Dexon's claims are barred, in whole or in part, by the doctrine of waiver.

NINTH AFFIRMATIVE DEFENSE

Dexon's claims are barred, in whole or in part, because if Dexon has been damaged, it is the result of its own conduct or the conduct of third parties, for which Optimum is not responsible.

TENTH AFFIRMATIVE DEFENSE

Optimum does not have sufficient knowledge or information to determine whether it may have additional, as yet unstated, affirmative defenses available. Optimum has not knowingly or intentionally waived any applicable additional affirmative defenses and reserves the right to assert these defenses as they become known to it during the pendency of this case, including by way of discovery. Pursuant to Rule 8(c) of the Federal Rules of Civil Procedure, Optimum reserves all affirmative defenses available at law or in equity that may be available now or in the future based on discovery or any other factual investigation. Further, Optimum reserves the right to amend this Answer and the defenses stated therein based on possible clarification of Dexon's TP Complaint, discovery, or further legal analysis.

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DEMAND FOR JURY TRIAL

Optimum demands trial by jury on all issues so triable.

Dated: April 20, 2022 BARNES & THORNBURG LLP

By: s/ Roya Rahmanpour
Seth A. Gold
Roya Rahmanpour
Attorneys for Third-Party Defendant
OPTIMUM DATA, INC.